IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 167 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Nilma Maghu Pal Dessai,
r/o. Nagorcem, Canacona, Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Respondent though served – absent.

COAM : A.P. LAVANDE, J.

DATE : APRIL 28, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge Judgment and Award dated 23.12.1999, passed by the Additional District Judge III (South) Margao in Land Acquisition Case No.91/95.

2. By Notification dated 12.8.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired large chunks of lands, situated at Chaudi Canacona for Konkan Railway Corporation Ltd. Land belonging to the respondent admeasuring 6267 sq. metres was part of the acquired land. The survey numbers, area and the nature of land acquired are as under :

Survey No.	***Area in sq. mtrs***	***Nature of land.***
141/2	156	Paddy field.
153/2	1225	Paddy field.
154/3	438	Paddy field.
139/1	1310	Paddy field.
135/2	1175	Paddy field.
142/2	1388	Paddy field.
145/7	575	Garden land.

The Special Land Acquisition Officer awarded Rs.8.10 per sq. metre for the tenanted paddy fields and Rs.9/- per sq. metre for the untenanted land.

3. Being dissatisfied, the respondent sought reference. The reference Court relied upon the Award dated 15.3.1989 and after holding that the acquired lands were similar to the lands in the said Award dated 15.3.1989, fixed the compensation in respect of the acquired lands at the rate of Rs.15/- per sq. metre in 1986 and after giving increase of 10 % every year on compounding basis awarded

Rs.24/- per sq. metre. In respect of Survey Nos. 141/2, 153/2, 154/3, 139/1 and 142/2, the reference Court awarded 50 % enhanced compensation to the respondent, who was a tenant and remaining 50 % to the owner. In respect of Survey No.135/2, the entire compensation has been awarded in favour of the respondent, since she was the owner of the said paddy field. In respect of Survey No.145/7, since the tenancy of the respondent was disputed, the reference Court ordered that the payment shall be made as per decision in Land Acquisition Case under Section 30 of the Act.

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the acquired lands at the rate of Rs.24/- per sq. metre is justified and, if not, what is the compensation payable in respect of the acquired lands ?

5. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have awarded Rs.24/- per sq. metre in respect of the acquired lands inasmuch as the said lands had no building potential. The learned Counsel further submitted that the lands in Award dated 15th March, 1989 and the acquired lands were not similar and, therefore, the reference Court ought not to have fixed the compensation on the basis of the Award dated 15.3.1989. The

learned Counsel submitted that in any event, reference Court ought not to have granted increase of 10 % every year since the acquired lands were paddy fields and had no building potential. The learned Counsel further submitted that the respondent had not led any evidence to establish any development around the acquired lands from the year 1986 to justify 10 % increase every year and that too on compounding basis. It was further submitted that this Court in number of connected appeals arising out of the same notification, has granted increase of 5 % every year in respect of the paddy fields and therefore, at the most, increase of 5 % per year could have been granted.

6. The respondent though served has chosen not to put in appearance before this Court.

7. I have perused the records and considered the submissions made by the learned Counsel appearing for the appellants. In my opinion, the reference Court was justified in relying upon the Award dated 15.3.1989, since the Award was in respect of lands which are similar to the acquired lands and situated in close proximity of the acquired lands. Therefore, the compensation fixed by the reference Court at the rate of Rs.15/- per sq. metre cannot be faulted. However, in so far as submission of Mr. Afonso that increase could not have been 10 % every year is concerned, I find considerable merit in the said

submission. In number of other connected appeals, under the same notification, I have held that when the acquired lands are paddy fields, increase of 10 % per year, on compounding basis was not justified and the reasonable increase should be 5 % every year. That being the position, the market rate in respect of the acquired lands works out to Rs.18.75 per sq. metre. I deem it appropriate to round up to Rs.19 per sq. metre.

8. The reference Court has awarded 50 % enhanced compensation in favour of the respondent in respect of the tenanted paddy fields. I am unable to accept the approach of the reference Court inasmuch as on the tillers day, the respondent has become deemed purchaser and as such, the respondent is entitled to the entire enhanced compensation. In number of connected appeals, I have awarded the entire enhanced compensation to be paid to the tenant. Therefore, the entire enhanced compensation in respect of the tenanted lands has to be paid to the respondent. Mr. Afonso has submitted that the owner of the said paddy fields were paid 00.40 paise per sq. metre and the owners had not sought reference claiming enhancement. This is an additional reason to hold that the respondent is entitled to the entire enhanced compensation. As such, in respect of Survey Nos. 141/2, 153/2, 154/3 and 139/1 the entire enhanced compensation is ordered to be paid to the respondent. But in respect of Survey No.145/7, the reference Court

was justified in holding that the enhanced compensation shall be paid in terms of the decision in the land acquisition case under Section 30 of the Act, since the tenancy of the respondent in respect of the said survey number was in dispute.

9. In view of the above discussion, the appeal is partly allowed. The Judgment and the Award of the reference Court stands modified in the aforesaid terms. No order as to costs.

A.P. LAVANDE, J.

ssm.